

REMARKS

Claims 1, 2 and 4-20 were pending prior to this amendment. In the office action, claims 1, 4 and 4-14 were rejected under 35 U.S.C. §101 because the claims were characterized as being directed to an apparatus that may be construed as software. Claims 1, 2 and 4-19 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. pre-grant publication 2003/0005396 by Hunt et al.

The claim rejections were made final. This amendment is therefore submitted under 37 C.F.R. §1.114 along with a Request for Continued Examination. Upon entry of this amendment, claims 16 and 17 will be cancelled because their limitations have been subsumed into claim 15. Claims 1, 2, 4-15 and 18-20 will remain pending after this amendment is entered.

As was argued by the applicant in its last response, the claim rejections that were made under §101 were improper under well-established Federal Circuit case law and should be withdrawn. The claims do in fact recite structure but even if they can somehow be read to claim software, the Federal Circuit has held that software can qualify as structure required under 35 U.S.C. §112.

Despite the impropriety of the §101 rejection, the preamble of claim 1 has been revised again to make it even more clear that the applicant is claiming structure and not software *per se*. It should be noted however that any sort of processor that satisfies the claim 1 limitations would of course fall within the scope of claim 1.

Referring now to the claim rejections that were made under §102, paraphrased, the amended claims recite that the network and mobile node databases are synchronized to each other using two different hash functions that are determined using two different hash

techniques. The hash generator is now claimed as being configured to generate two different types of hashes. The first type of hash is formed over all or at least a first part of a database, the result of which is compared to a first type of hash that is formed from a corresponding first part of a network copy of the database. If the “first type” of hash formed from the mobile copy of the database does not match the “first type” of hash formed from the same portion of the network copy of the database, the network copy of the database and the mobile node copy of the database are considered to be out of synchronization with each other. A “second type” of hash is then formed over a subset or sub-part of each database, i.e., the network copy and the mobile-node copy. The second type hash values are then compared to determine whether the sub-parts of the two databases are out of match.

Claim 1 has been additionally amended to recite that the content retriever retrieves data from the mobile-copy of the database when the first and second hash comparisons indicate a database mismatch. The retrieved data is sent to the network for use in synchronizing the two databases to each other.

It should be noted too that the preamble of claim 1 has been revised to clarify that what is being claimed is an apparatus at the mobile node portion of a network that has both a network part and a mobile node part.

Support for amending the claims to recite that two different types of hashes are formed using two different hash techniques can be found in the specification on page 4, lines 14-31. Additional support can be found on page 6, in lines 3-18. See also page 12, lines 17-28 as well as the original claims.

Dependent claim 2 has been amended to recite that the first type of hash is performed responsive to an external triggering event. Dependent claims 4, 8 and 9 have also been superficially amended to make their limitations consistent with the revisions made to claim 1.

Dependent claims 16 and 17 have been cancelled because their limitations have been subsumed into independent claim 15, from which claims 16 and 17 depended. Claim 18 was superficially amended to improve its readability and make it consistent with claim 15.

Referring now to the office action, and more particularly to the rejection of claim 4, which recites among other things, the computation of two different types of hash values, the Examiner asserted in the office action that Hunt anticipates claim 4. In the second full paragraph of page 5 of the office action, the Examiner asserted that Hunt's figures 5 and 6 and paragraph 0015 of Hunt, ostensibly teach first and second types of hashes.

The Applicant believes that the Examiner's reliance on Hunt to be in error. Hunt does not show or suggest the formation or use of two different hashes in either Figure 5, Figure 6 or in paragraph [0015]. With respect to paragraph [0015] of Hunt, there is no disclosure for the formation of two different hash values using two different hash functions. Paragraph [0015] recites several different terms for a hash value, which Hunt simply defines in paragraph [0015] as meaning the same thing, i.e., a hash value.

Paragraphs [0027] and [0031] describe in detail how Hunt determines that databases are not synchronized. Paragraph [0031] in particular states:

“The message digest from the client and the corresponding entry from the database of message digests from the repository are then compared at decision block 510. If the message digest and the database match at decision block 510, no further processing is required for the current file. If, at decision block 510, the message digest and the database do not match, the files... are copied or marked for later copying....”
(Emphasis added.)

Hunt therefore does not show or suggest the formation or use of two different hashes using two different hash functions.

The applicant has reviewed Hunt as well as the other previously cited references (Weinstein, Yianilos, Leonetti and contends that none of them show or suggest what is recited in the amended claims. Reconsideration of the pending claims is therefore respectfully requested.

Respectfully submitted,

/ Robert H. Kelly /

Robert H. Kelly
Registration No. 33,922

KELLY & KRAUSE, L.P.
6600 LBJ Freeway, Suite 275
Dallas, Texas 75240
Telephone: (214) 446-6684
Fax: (214) 446-6692